

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff/Respondent,

vs.

ORDER

Cr. No. 97-276(22) (MJD)

Antoine D. Brown,

Defendant/Petitioner.

Petitioner is pro se.

Petitioner has moved the Court, pursuant to 18 U.S.C. § 3582(c), for modification of his sentence.

Despite Petitioner's attempt to style this motion as one under Section 3582, it is, in fact, a collateral challenge to his sentence. Petitioner has, however, already challenged his conviction and sentence pursuant to 28 U.S.C. § 2255. [Doc. No. 1260, Order denying § 2255 Relief as to Antoine Brown]. Accordingly, the Court must treat the present motion as a successive motion under § 2255.

With regard to successive motions, the statute provides:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain –

1) newly discovered evidence that, if proven and viewed in light of

the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

In this case, Petitioner has not received permission from the Court of Appeals to file the instant motion. Accordingly, this Court is without jurisdiction to address this motion.

IT IS HEREBY ORDERED that the Petition for Relief Pursuant to 18 U.S.C. § 3582 [Doc. No. 1442] is DENIED.

Date: July 28, 2005

s / Michael J. Davis
Michael J. Davis
United States District Court